

An appeal

- by -

Sue Devi
("Devi")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: David B. Stevenson

FILE No.: 2002/225

DATE OF DECISION: July 18, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Sue Devi (“Devi”) of a Determination that was issued on April 10, 2002 by a delegate of the Director of Employment Standards (the “Director”).

Devi had filed a complaint with the Director under the *Act* alleging she was owed length of service compensation from her employer Harlan Fairbanks Co. Ltd. (“Harlan Fairbanks”). The Determination concluded that Devi was not terminated without notice, but had quit her employment during a period of temporary layoff, ceased the investigation of the complaint and closed the file.

Devi says that conclusion is wrong.

ISSUE

The issue in this appeal is whether Devi has shown an error in the Determination sufficient to persuade the Tribunal to exercise its authority under Section 115 of the *Act* and return the matter to the Director for investigation and determination.

FACTS

The Determination set out the following background:

The employer operates a concession equipment and supplies business. In November of 2000, the employer decided to divest itself of its manufacturing operations and concentrate solely on food distribution. The employer tried to sell the manufacturing operations as an ongoing concern but eventually sold off the plant’s assets. As production was slowed, employees involved in the food manufacturing operations worked fewer hours. The issues to be determined are whether or not the complainant’s employment was terminated or if she quit her job.

The following key findings of fact were made: The complainant was receiving fewer hours of work. She could not afford to work these fewer hours and informed the employer of this. The employer agreed to lay her off.

The Director reached the following conclusion from the key areas of fact:

In my view, when the complainant’s hours were cut, she realized she couldn’t survive economically. Therefore she told her employer that she could not continue working unless her full time hours were maintained. The employer could not guarantee this, so the employer agreed to lay her off. In this case, it cannot be said the employer terminated the employment. It was the complainant’s decision to take a layoff rather than work reduced hours.

The Determination examined whether Section 66 of the *Act* could be applied, but found it did not entitle Devi to length of service compensation because she quit her employment before the period of temporary

layoff had expired. The Tribunal decision *Microb Resource Inc. (operating as Salt Spring Island Roasting Company)* BC EST #D142/00 was referred to in support of that finding.

ARGUMENT AND ANALYSIS

I can find no merit in any aspect of this appeal.

The burden is on Devi, as the appellant, to persuade the Tribunal that the Determination was wrong, in law, in fact or in some manner of mixed law and fact. Placing the burden on the appellant is consistent with the scheme of the *Act*, which contemplates that the procedure under Section 112 of the *Act* is an appeal from a determination already made and otherwise enforceable in law, and with the objects and purposes of the *Act*, in the sense that it would it be neither fair nor efficient to ignore the initial work of the Director (see *World Project Management Inc.*, BC EST #D134/97 (Reconsideration of BC EST # D325/96)).

In this appeal, Devi has not provided any additional material that would demonstrate the Director took an incorrect view of the facts relevant to the complaint made by her. As a matter of law under the *Act*, the relationship between Section 66 of the *Act* and the temporary layoff provisions has been considered and decided by the Tribunal in *Microb Resource Inc.*, *supra*. Nothing in the appeal has persuaded me that the Tribunal was wrong in its approach to the interplay of those statutory provisions or that the circumstances of Devi's complaint was not caught by the analysis in the *Microb Resource Inc.* case.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated April 10, 2002 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal